HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.6954 of 2007

Between:

Government of Andhra Pradesh,
represented by its Secretary, Agriculture
and Co-operation Department,
A.P. Secretariat, Hyderabad and three others.

…Petitioners

And

Sri A. Sridhar

…Respondent

:: O R D E R ::

Counsel for the petitioners: Government Pleader for Services-I

24th April, 2007

Per G.S. Singhvi, CJ

The Government of Andhra Pradesh and three others have filed

this petition for quashing order dated 6-2-2007 passed by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A.No.6763 of 2006.

Respondent – A. Sridhar was appointed as Tracer in the Agriculture Department on 9-8-1996 on compassionate ground because his father, Sri A. Appa Rao, who was working as Attender in the office of the Assistant Director, Payakaraopeta, was invalidated from service on medical grounds. Vide proceedings No. Estt. (2) L.Dis.1155/2001, dated 24-3-2001, the respondent was declared as approved probationer under the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short, 'the Rules'). After four years, the respondent applied for leave with effect from 18-3-2005. The same was extended up to 15-3-2006. At the end of extended leave, the respondent reported for duty, but he was not allowed to join the post. Instead, notice dated 10-4-2006 was served on him with the allegation that he had applied for leave without giving address and that he was doing employment in other country and that his appointment has not been approved by the State Government. The respondent filed reply dated 11-5-2006 and denied the allegations. He also referred to the proceedings dated 24-3-2001 and pleaded that he may be given posting orders. The concerned authority i.e. Joint Director of Agriculture, Yendada, Visakhapatnam (petitioner No.3 herein) did not accept the respondent's request and served him with copy of Memo dated 28-4-2004 vide which the State Government declined to ratify his appointment as Tracer.

The respondent challenged Memo dated 28-4-2004 in O.A.No.6763 of 2006. He pleaded that the State Government's decision not to ratify his appointment was liable to be quashed because respondent No.3 had already declared him as approved

probationer.

In the counter filed on behalf of the petitioners, reference was made to G.O.Ms.No.69, General Administration Department (Ser.A) Department, dated 28-2-1998 and it was pleaded that proposal submitted by the department for ratification of the respondent's appointment was rejected because he had absconded from duty and remained absent for a period of one year and three days. It was further pleaded that the policy of compassionate appointment on medical invalidation was dispensed with vide G.O.Ms.No.202, General Administration (Ser.A) Department, dated 24-7-2002 and, therefore, the applicant (the respondent herein) is not entitled to continue in service.

The Tribunal noted that the applicant (the respondent herein) had been appointed in accordance with the policy contained in G.O.Ms.No.504, General Administration (Ser.A) Department, dated 30-7-1980 because his father Shri Appa Rao was retired on the ground of medical invalidation; that his services were regularized with effect from 9-8-1996 and held that G.O.Ms.No.69, dated 28-2-1998 could not be invoked in his case for insisting on ratification of his appointment by the State Government or State Level Committee constituted vide G.O.Ms.No.214, General Administration (Ser.A) Department, dated 9-6-1998. The Tribunal further held that the policy contained in the subsequent G.Os. could not have been pressed into service for indirectly cancelling the proceedings issued by the Joint Director on 24-3-2001.

We have heard learned Government Pleader for Services-I. In our opinion, the order under challenge does not suffer from any patent legal infirmity warranting interference under Article 226 of the Constitution of India. Paragraphs 5, 8 and 9 of that order,

which contain the reasons assigned by the Tribunal for setting aside Memo dated 28-2-2004, read as under:

> "5. The applicant was appointed as Tracer by the Joint Director of Agriculture, Yendada, Visakhapatnam, in his proceedings Rc.No.Estt(3)8180/96, dt.7-8-1996. The appointment of the applicant was in pursuance of G.O.Ms.No.504, General Administration (Services-A) Department, dt.30-7-1980 on the ground that the applicant's father Sri A. Appa Rao while working as Attender in the office of the Assistant Director of Agriculture, Payakaraopet, retired on medical invalidation grounds. By virtue of proceedings No.Estt(2) L.Dis.No.1155/2001 issued by the Joint Director of Agriculture, Visakhapatnam, dt.24-3-2001, the services of the applicant were regualrised w.e.f. 9-8-1996 the date on which he joined duty. The period of probation was declared to have been completed satisfactorily by 19-2-1999, by duly extending the period of 11 days 6 months, since he was on leave for 191 days during probation period. Under G.O.Ms.No.504, G.A. (Ser.A) Dept., dt.30-7-1980, compassionate appointments of dependents of the employees who die on harness or who retired on medical invalidation grounds is permitted and the appointing authorities are authorized to do so. This G.O. does not contemplate ratification of such appointments. Subsequently, the Government issued G.O.Ms.No.69, General Administration (Ser.A) Department, dt.28-2-1998, appointing the District Level Committees for scrutiny of the applications and the recommendations to be sent to the State Level Committee for approval. This is said to have been in respect of cases/proposals that arise on or after
> 1-8-1996. This G.O. is superceded and the government issued G.O.Ms.No.214, General Administration (Ser.A) Department, dt.9-6-1998, and this G.O. is for retirement on medical invalidation at District Level and the District Level Committee only will recommend and it is not necessary for ratification by the State Level Committee. So, the contention of the respondents that the ratification is required by the State Level Committee by relying upon G.O.Ms.No.69, dt.28-2-1998 is not tenable.

8. Government can only review the orders within the reasonable time, but not after a long lapse of time. In the impugned Memo dt.28-2-2004 issued by the Deputy Secretary to Government, Agriculture & Cooperation (Agri.IV) Department, it is stated that compassionate appointment in medical invalidation cases is dispensed with vide G.O.Ms.No.202, General Administration (Ser.A) Department, dt.27-4-2002, in view of the orders of the Hon'ble High Court quashing policy of the State for compassionate appointments on medical invalidation. The State has reviewed the policy of compassionate appointments and cancelled the same under this G.O. But, G.O.Ms.No.203, dt.27-4-2002, was issued on the same day. As per para – 2(3) of the said G.O., any appointments were already made they have to be continued. So, under G.O.Ms.No.203 the appointments already made, obviously before the date of that G.O. are said to be continued. Here the applicant was appointed on 7-8-1996 i.e. six years prior to issuance of the G.O.Ms.No.202 and G.O.Ms.No.203. So, by applying the G.O.Ms.No.202 and passing the impugned order is bad under law. By virtue of G.O.Ms.No.203,
dt.27-4-2002, the appointment of the applicant which was already made holds good and cannot be reopened on the ground that the State has subsequently taken a policy decision not to make the compassionate appointments on medical invalidation.

9. Viewed from angle, the impugned Memo No.19297/ Agril.IV(1) 2003-1, dt.28-2-2004, issued by the Deputy Secretary to Government, Agriculture & Co-operation (Agri.IV) Department is bad under law and is liable to be set aside."

We agree with the Tribunal that the policy contained in G.O.Ms.No.69, dated 28-2-1998 and G.O.Ms.No.214, dated 9-6-1998 could not have been applied to the respondent's case because he was appointed much prior to the issue of those G.Os. We are further of the view that even if the above mentioned two G.Os.

are treated applicable to the respondent's case, the State Government could not have been declined to ratify his appointment as Tracer ignoring the fact vide proceedings dated 24-3-2001, the Joint Director of Agriculture, Yendada, Visakhapatnam had declared him as an approved probationer under the Rules and the said proceedings had not been set aside by the competent authority. In any case, an order adversely affecting the right of the respondent to hold the post of Tracer could not have been passed without giving him action oriented notice and opportunity of hearing.

For the reasons stated above, we hold that the petitioners have failed to make out a case for setting aside the order of the Tribunal and the writ petition is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the writ petition, WPMP No.8868 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

April 24, 2007

svs